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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 364

KEIFER AND KEIFER, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION AND REGIONAL AGRICULTURAL CREDIT CORPORATION OF SIOUX CITY, IOWA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RECONSTRUCTION FINANCE CORPORATION IN OPPOSITION

INTRODUCTORY

This brief is limited to a consideration of the question that affects Reconstruction Finance Corporation (hereinafter called R. F. C.) alone as a party in the pending proceeding.

OPINIONS BELOW

The opinion of the District Court (R. 34) is reported in 22 Fed. Supp. 918. The opinion of the Circuit Court of Appeals (R. 44–50) is reported in 97 F. (2d) 812.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 8, 1938 (R. 51). A petition for rehearing was denied and the order entered on August 9, 1938 (R. 63). The petition for a writ of certiorari was filed on September 20, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by Act of February 13, 1925.

QUESTION PRESENTED

Whether R. F. C. can be held liable, as principal, for the acts of the Regional Agricultural Credit Corporation (hereinafter called Regional) of Sioux City, Iowa, despite the fact that these acts occurred long after control and supervision over the Regionals had been transferred by statute and Executive Order to the Farm Credit Administration.

STATUTES AND EXECUTIVE ORDER INVOLVED

The applicable statutes and Executive Order are set forth in the Appendix (infra pp. 10 to 21).

STATEMENT

By Section 201 (e) of the Emergency Relief and Construction Act of 1932, approved July 21, 1932, R. F. C. was authorized

> to create in any of the twelve Federal land-bank districts where it may deem the same to be desirable a regional agricultural credit corporation with a paid-up capital of not

> less than $3,000,000, to be subscribed for by the Reconstruction Finance Corporation * * *.

It was further provided that such corporations

> shall be managed by officers and agents to be appointed by the Reconstruction Finance Corporation under such rules and regulations as its board of directors may prescribe.

These corporations were authorized to make loans to farmers and stockmen. Interest rates were

> subject to the approval of the Reconstruction Finance Corporation,

and all expenses

> incurred in connection with the operation of such corporations shall be supervised and paid by the Reconstruction Finance Corporation under such rules and regulations as its board of directors may prescribe.

Pursuant to this Act R. F. C. issued the charter of the Regional of Sioux City, Iowa, on September 10, 1932 (R. 11–12).

Pursuant to Sections 401 and 403 of the Act of Congress approved June 30, 1932, c. 314, 47 Stat. 413, as amended by Act of Congress approved March 3, 1933, c. 212, 47 Stat. 1517, the President issued Executive Order No. 6084 on March 27, 1933, which provided among other things that

> (5) There are transferred to the jurisdiction and control of the Farm Credit Administration:
>
> * * * * *

> (e) The functions of the Reconstruction Finance Corporation and its board of directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under section 201 (e) of the Emergency Relief and Construction Act of 1932; relating to the establishment of rules and regulations for such management; and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.

The Executive Order further provided for the transfer of

> The records, property (including office equipment), and personnel used and employed in the execution of the functions hereinbefore transferred

and after considering specific appropriations not here relevant provided that

> * * * All other appropriations, allotments, and other funds available for use in connection with the functions and executive agencies hereby transferred and consolidated are hereby transferred to and vested in the Farm Credit Administration, and shall be available for use by it, for the same purposes as if the Farm Credit Administration were named in the law or authority providing such appropriations, allotments, or other funds.

In addition it provided that

> All power, authority, and duties conferred by law upon any officer, executive agency, or head thereof, from which or from whom transfer is hereinbefore made, in relation to the executive agency or function transferred, are transferred to and vested in the Governor of the Farm Credit Administration.

Executive Order No. 6084 became effective on May 27, 1933, in accordance with its terms and the controlling statutory provisions.

On December 14, 1936, over three years after the transfer of control and supervision over the Regionals from R. F. C. to the Farm Credit Administration, petitioner herein brought suit against respondents herein, alleging that the Regional of Sioux City had received certain livestock on or about October 21, 1934, and after orally agreeing to care for it during the winter 1934–35, had dealt with it in a careless and negligent manner (R. 1–11, 12–13).

It appears on the face of the record, therefore, that the acts complained of occurred over 18 months after the transfer of control and supervision over the Regionals from R. F. C. to the Farm Credit Administration.

Respondents' demurrers (R. 32–34) were sustained by the District Court below (R. 34–35). Petitioner's application for leave to file an amended petition was denied by said court (R. 35–36), and

thereupon petitioner appealed to the Circuit Court of Appeals below (R. 36–37).

The Circuit Court of Appeals affirmed the judgment appealed from with respect to both respondents (R. 43–50, 51). With respect to respondent R. F. C. it held that, since control of the respondent Regional had been transferred from R. F. C. prior to the acts complained of by petitioner, R. F. C. could not be held liable.

ARGUMENT

A

Petitioner is seeking to hold R. F. C. responsible, as principal, for acts of the Regional of Sioux City that occurred more than 18 months after control and supervision over the Regional, and over its management and funds, had been transferred by statute and Executive Order to the Farm Credit Administration.

Nowhere does petitioner question the validity or meaning of the Executive Order effecting the transfer, or of the Act of Congress pursuant to which it was issued; nor does petitioner claim that it is being deprived of any rights which arose prior to the effective date of the Executive Order. But petitioner contends that R. F. C. is liable because the Executive Order did not in specific language state that the charter provisions of the Regional of Sioux City, which recited R. F. C.'s statutory powers, were amended thereby. Merely to state

this contention is to answer it. The charter could not enlarge or prolong R. F. C.'s statutory powers. Transfer of these powers to the Farm Credit Administration stripped R. F. C. of them. They could not continue to be exercised by both agencies. To give substance to petitioner's contention would completely nullify the effectiveness of the Executive Order, which petitioner has conceded on pages 3 and 4 of its petition for a writ of certiorari.

The cases cited by petitioner on pages 17 and 18 of its brief are wholly irrelevant since they relate to the liability of one corporation for the acts of another where actual ownership and control exists.

The Circuit Court of Appeals below, in sustaining R. F. C.'s position, has stated it briefly and well. It said (R. 46):

> So far as the defendant Reconstruction Finance Corporation is concerned, the demurrer was clearly properly sustained. On September 10, 1932, that corporation, pursuant to Act of Congress, created the defendant Regional Agricultural Credit Corporation, of Sioux City, Iowa. By Executive Order, the President transferred control of the defendant Regional Agricultural Credit Corporation from Reconstruction Finance Corporation to the Farm Credit Administration. This order became effective sixty days subsequent to its date. The transfer, however, was actually made approximately a year and a half prior to the time of the transactions and acts complained of by the plain-

tiff. The Reconstruction Finance Corporation could not, therefore, be held liable.

B

It is readily apparent that the instant case presents no special and important reasons for the granting of a writ of certiorari with respect to respondent R. F. C.

The question presented is not an important question of federal law which has not been, but should be, settled by this Court.

Nor is there a conflict between the Circuit Court of Appeals below and the decisions of another Circuit Court or of the local court. Nor has the Circuit Court of Appeals below departed from applicable decisions of this Court or from an accepted course of judicial proceedings.

Indeed, no adequate reason is assigned by petitioner for the granting of its petition in respect to respondent R. F. C.

Accordingly, if a writ of certiorari is granted it should be limited to the first question presented in petitioner's petition. This Court has many times limited its review to questions warranting its consideration, and its power so to do is undoubted. *L. P. Larson, Jr. Co.* v. *William Wrigley, Jr. Co.*, 277 U. S. 97, 275 U. S. 521; *Ticonic National Bank et al.*, v. *Sprague*, 302 U. S. 675.

CONCLUSION

The instant case presents no special and important reasons for the granting of a writ of certiorari with respect to respondent R. F. C. Accordingly, it is respectfully submitted that if a writ of certiorari is granted it should be limited to the first question presented in petitioner's petition for a writ of certiorari.

CLAUDE E. HAMILTON, JR.,
General Counsel,
C. J. DUBB,
Assistant General Counsel,
HANS A. KLAGSBRUNN,
Counsel,
Reconstruction Finance Corporation.

OCTOBER, 1938

APPENDIX

Section 201 (e) of the Emergency Relief and Construction Act of 1932, approved July 21, 1932:

(e) The Reconstruction Finance Corporation is further authorized to create in any of the twelve Federal land-bank districts where it may deem the same to be desirable a regional agricultural credit corporation with a paid-up capital of not less than $3,000,000, to be subscribed for by the Reconstruction Finance Corporation and paid for out of the unexpended balance of the amounts allocated and made available to the Secretary of Agriculture under section 2 of the Reconstruction Finance Corporation Act. Such corporations shall be managed by officers and agents to be appointed by the Reconstruction Finance Corporation under such rules and regulations as its board of directors may prescribe. Such corporations are hereby authorized and empowered to make loans or advances to farmers and stockmen, the proceeds of which are to be used for an agricultural purpose (including crop production), or for the raising, breeding, fattening, or marketing of livestock, to charge such rates of interest or discount thereon as in their judgment are fair and equitable, subject to the approval of the Reconstruction Finance Corporation, and to rediscount with the Reconstruction Finance Corporation and the various Federal reserve banks and Federal intermediate credit banks any paper that they acquire which is eligible for such purpose. All expenses in-

curred in connection with the operation of such corporations shall be supervised and paid by the Reconstruction Finance Corporation under such rules and regulations as its board of directors may prescribe.

Title IV of the Act of Congress approved June 30, 1932, c. 314, 47 Stat. 413, as amended by Act of Congress approved March 3, 1933, c. 212, 47 Stat. 1517:

TITLE IV—REORGANIZATION OF EXECUTIVE DEPARTMENTS

Declaration of Standard

SEC. 401. The Congress hereby declares that a serious emergency exists by reason of the general economic depression; that it is imperative to reduce drastically governmental expenditures; and that such reduction may be accomplished in great measure by proceeding immediately under the provisions of this title.

Accordingly, the President shall investigate the present organization of all executive and administrative agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(a) To reduce expenditures to the fullest extent consistent with the efficient operation of the Government;

(b) To increase the efficiency of the operations of the Government to the fullest extent practicable within the revenues;

(c) To group, coordinate, and consolidate executive and administrative agencies of the Government, as nearly as may be, according to major purposes;

(d) To reduce the number of such agencies by consolidating those having similar functions under a single head, and by abolishing such agencies and/or such functions thereof as may not be necessary for the efficient conduct of the Government;

(e) To eliminate overlapping and duplication of effort; and

(f) To segregate regulatory agencies and functions from those of an administrative and executive character.

Definition of Executive Agency

SEC. 402. When used in this title, the term "executive agency" means any commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government and, except as provided in section 403, includes the executive departments.

Power of President

SEC. 403. Whenever the President, after investigation, shall find and declare that any regrouping, consolidation, transfer, or abolition of any executive agency or agencies and/or the functions thereof is necessary to accomplish any of the purposes set forth in section 401 of this title, he may by Executive order—

(a) Transfer the whole or any part of any executive agency and/or the functions thereof to the jurisdiction and control of any other executive agency;

(b) Consolidate the functions vested in any executive agency; or

(c) Abolish the whole or any part of any executive agency and/or the functions thereof; and

(d) Designate and fix the name and functions of any consolidated activity or executive agency and the title, powers, and duties of its executive head; except that the President shall not have authority under this title to abolish or transfer an executive department and/or all the functions thereof.

SEC. 404. The President's order directing any transfer, consolidation, or elimination under the provisions of this title shall also make provision for the transfer or other disposition of the records, property (including office equipment), and personnel, affected by such transfer, consolidation, or elimination. In any case of a transfer or consolidation under the provisions of this title, the President's order shall also make provision for the transfer of such unexpended balances of appropriations available for use in connection with the function or agency transferred or consolidated, as he deems necessary by reason of the transfer or consolidation, for use in connection with the transferred or consolidated function or for the use of the agency to which the transfer is made or of the agency resulting from such consolidation.

Saving Provisions

SEC. 405. (a) All orders, rules, regulations, permits, or other privileges made, issued, or granted by or in respect of any executive agency or function transferred or consolidated with any other executive agency or function under the provisions of this title, and in effect at the time of the transfer or consolidation, shall continue in effect to the same extent as if such transfer or consolidation had not occurred, until modified, superseded, or repealed.

(b) No suit, action, or other proceeding lawfully commenced by or against the head of any executive agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of any transfer of authority, power, and duties from one officer or executive agency of the Government to another under the provisions of this title, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the head of the executive agency or other officer of the United States to whom the authority, powers, and duties are transferred.

(c) All laws relating to any executive agency or function transferred or consolidated with any other executive agency or function under the provisions of this title, shall, in so far as such laws are not inapplicable, remain in full force and effect, and shall be administered by the head of the executive agency to which the transfer is made or with which the consolidation is effected.

Winding Up Affairs of Agencies

SEC. 406. In the case of the elimination of any executive agency or function, the President's order providing for such elimination shall make provision for winding up the affairs of the executive agency eliminated or the affairs of the executive agency with respect to the functions eliminated, as the case may be.

Effective Date of Executive Order

SEC. 407. Whenever the President makes an Executive order under the provisions of this title, such Executive order shall be submitted to the Congress while in session and shall not become effective until after the expiration of sixty calendar days after such transmission, unless Congress shall by law provide for an earlier effective date of such Executive order or orders: *Provided,* That if Congress shall adjourn before the expiration of sixty calendar days from the date of such transmission such Executive order shall not become effective until after the expiration of sixty calendar days from the opening day of the next succeeding regular or special session.

Appropriations Impounded

SEC. 408. The appropriations or portions of appropriations unexpended by reason of the operation of this title shall not be used for any purpose but shall be impounded and returned to the Treasury.

Termination of Power

SEC. 409. The authority granted to the President under section 403 shall terminate upon the expiration of two years after the date of enactment of this Act unless otherwise provided by Congress.

EXECUTIVE ORDER No. 6084

WHEREAS sections 401 and 403 of Title IV of Part II of the Legislative Appropriation Act, fiscal

year 1933, as amended by an act of Congress approved March 3, 1933, provide:

SEC. 401. The Congress hereby declares that a serious emergency exists by reason of the general economic depression; that it is imperative to reduce drastically governmental expenditures; and that such reduction may be accomplished in great measure by proceeding immediately under the provisions of this title.

Accordingly, the President shall investigate the present organization of all executive and administrative agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(*a*) To reduce expenditures to the fullest extent consistent with the efficient operation of the Government;

(*b*) To increase the efficiency of the operations of the Government to the fullest extent practicable within the revenues;

(*c*) To group, coordinate, and consolidate executive and administrative agencies of the Government, as nearly as may be, according to major purposes;

(*d*) To reduce the number of such agencies by consolidating those having similar functions under a single head, and by abolishing such agencies and/or such functions thereof as may not be necessary for the efficient conduct of the Government;

(*e*) To eliminate overlapping and duplication of effort; and

(*f*) To segregate regulatory agencies and functions from those of an administrative and executive character.

SEC. 403. Whenever the President, after investigation, shall find and declare that any regrouping, consolidation, transfer, or abo-

lition of any executive agency or agencies and/or the functions thereof is necessary to accomplish any of the purposes set forth in section 401 of this title, he may by Executive order—

(*a*) Transfer the whole or any part of any executive agency and/or the functions thereof to the jurisdiction and control of any other executive agency;

(*b*) Consolidate the functions vested in any executive agency; or

(*c*) Abolish the whole or any part of any executive agency and/or the functions thereof; and

(*d*) Designate and fix the name and functions of any consolidated activity or executive agency and the title, powers, and duties of its executive head; except that the President shall not have authority under this title to abolish or transfer an executive department and/or all the functions thereof.

NOW, THEREFORE, pursuant to the authority so vested in me, and after investigation, it is found and declared that the following changes in executive agencies and the functions thereof are necessary to accomplish the purposes set forth in section 401 above recited, and it is hereby ordered that:

(1) The functions of the Secretary of Agriculture as a member of the Federal Farm Board, and the offices of the appointed members of the Federal Farm Board, except the office of the member designated as chairman thereof, are abolished.

(2) The name of the Federal Farm Board is changed to the Farm Credit Administration.

(3) The name of the office of Chairman of the Federal Farm Board is changed to Governor of the

Farm Credit Administration, and he is vested with all the powers and duties of the Federal Farm Board.

(4) The functions of the Secretary of the Treasury as a member of the Federal Farm Loan Board, and the offices of the appointed members of the Federal Farm Loan Board, except the office of the member designated as Farm Loan Commissioner, are abolished, and all the powers and functions of the Federal Farm Loan Board are transferred to and vested in the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration as herein provided.

(5) There are transferred to the jurisdiction and control of the Farm Credit Administration:

(*a*) The Federal Farm Loan Bureau and the functions thereof; together with the functions of the Federal Farm Loan Board, including the functions of the Farm Loan Commissioner;

(*b*) The functions of the Treasury Department and the Department of Agriculture, and the Secretaries thereof, under Executive Authorizations to give aid to farmers, dated July 26, 1918, and any extensions or amendments thereof;

(*c*) The functions of the Secretary of Agriculture under all provisions of law relating to the making of advances or loans to farmers, fruit growers, producers and owners of livestock and crops, and to individuals for the purpose of assisting in forming or increasing the capital stock of agricultural-credit corporations, livestock-loan companies, or like organizations, except Public Resolution No. 74, Seventieth Congress, approved December 21, 1928, providing for the Porto Rican Hurricane Relief Commission;

(*d*) The Crop Production Loan Office and the eed Loan Office of the Department of Agriculture, nd the functions thereof;

(*e*) The functions of the Reconstruction Fi- nce Corporation and its board of directors elating to the appointment of officers and agents manage regional agricultural credit corporations rmed under section 201 (*e*) of the Emergency elief and Construction Act of 1932; relating to e establishment of rules and regulations for such anagement; and relating to the approval of loans nd advances made by such corporations and of the rms and conditions thereof.

(6) The functions vested in the Federal Farm oard by section 9 of the Agricultural Marketing ct are abolished, except that such functions shall ntinue to be exercised to such extent and for such me as may be necessary to permit the orderly nding up of the activities of stabilization corpo- tions heretofore recognized under authority of ch section, and the Governor of the Farm Credit dministration shall take appropriate action for nding up at the earliest practicable date the ac- ities of such corporations and all affairs related the exercise of such functions.

(7) The records, property (including office uipment), and personnel used and employed in e execution of the functions hereinbefore trans- rred are transferred to the jurisdiction and con- l of the Farm Credit Administration.

(8) The sum of $2,000,000 of the unexpended lances of appropriations made to the Federal rm Board by Public Resolutions No. 43 and No. of the Seventy-second Congress shall be im- unded and returned to the Treasury, which sum

shall be in addition to the other savings to be effected by the Farm Credit Administration as a result of this order.

(9) The unexpended balances of appropriations to the Secretary of Agriculture, the Federal Farm Loan Bureau, and the Federal Farm Board for salaries, expenses, and all other administrative expenditures in the execution of the functions herein vested in the Farm Credit Administration shall be transferred to and vested in the Farm Credit Administration as a single fund for its use for salaries, expenses, and all other administrative expenditures for the execution of any or all of such functions without restriction as to the particular functions for the execution of which the same were originally appropriated. All other appropriations, allotments, and other funds available for use in connection with the functions and executive agencies hereby transferred and consolidated are hereby transferred to and vested in the Farm Credit Administration, and shall be available for use by it, for the same purposes as if the Farm Credit Administration were named in the law or authority providing such appropriations, allotments, or other funds.

(10) All power, authority, and duties conferred by law upon any officer, executive agency, or head thereof, from which or from whom transfer is hereinbefore made, in relation to the executive agency or function transferred, are transferred to and vested in the Governor of the Farm Credit Administration.

(11) The Governor of the Farm Credit Administration is directed to dismiss, furlough, transfer, or make other appropriate disposition of such of

the officers and employees under his jurisdiction and control as are not required for the proper execution of the functions of the Farm Credit Administration.

(12) The Governor of the Farm Credit Administration is authorized to execute any and all functions and perform any and all duties vested in him through such persons as he shall by order designate or employ.

(13) The Governor of the Farm Credit Administration, by order or rules and regulations, may consolidate, regroup, and transfer offices, bureaus, activities, and functions in the Farm Credit Administration, so far as may be required to carry out the purposes to which this order is directed, and may fix or change the names of such offices, bureaus, and activities and the duties, powers, and titles of their executive heads.

This order shall take effect upon the sixty-first calendar day after its transmission to Congress unless otherwise determined in accordance with the provisions of section 407 of the act cited above, as amended.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
March 27, 1933.

U. S. GOVERNMENT PRINTING OFFICE, 1933